

POR SF
11.3.31.1.1

2002-093

TERMINAL 1 NORTH LEASE

BETWEEN

THE PORT OF PORTLAND

AND

THE CITY OF PORTLAND

USEPA SF



1293920

POPT1N100498

TABLE OF CONTENTS

| | | |
|-------|---|---|
| 1. | AGREEMENT TO LEASE PREMISES | 1 |
| 1.1 | Agreement to Lease | 1 |
| 1.2 | Phasing of Premises | 1 |
| 1.2.1 | Phase 1 Premises | 1 |
| 1.2.2 | Phase 2 Premises | 2 |
| 1.2.3 | Liability for Failure of Current Tenants to Vacate..... | 2 |
| 2. | USE OF THE PREMISES | 2 |
| 2.1 | Permitted Uses | 2 |
| 2.2 | Use of Dock at Terminal; DSL Lands | 2 |
| 2.3 | Limits on Use | 2 |
| 2.4 | Compliance with Laws | 3 |
| 2.5 | Common Areas | 3 |
| 2.5.1 | Right to Use | 3 |
| 2.5.2 | Port Work in the Common Area | 3 |
| 2.5.3 | Entrance Gate | 3 |
| 2.5.4 | Load Restrictions | 4 |
| 2.5.5 | Right to Lease to Others..... | 4 |
| 3. | TERM | 4 |
| 3.1 | Term | 4 |
| 3.2 | Option to Extend Lease Term | 4 |
| 3.3 | Exercise of Option to Extend | 5 |
| 4. | RENT | 5 |
| 4.1 | Rent | 5 |
| 4.1.1 | Phase 1 Premises Rent | 5 |
| 4.1.2 | Phase 2 Premises Rent | 5 |
| 4.1.3 | Rent Adjustments Due to Holdover of Benson or County..... | 6 |
| 4.1.4 | Rent Adjustments Due to Change in Premises | 6 |
| 4.2 | Adjustment to Basic Rent | 6 |
| 4.2.1 | CPI-U | 6 |
| 4.2.2 | Alternatives to CPI-U..... | 6 |
| 4.3 | Taxes..... | 7 |
| 4.4 | Other Fees | 7 |
| 4.5 | Time and Place of Basic Rent Payment..... | 7 |
| 4.6 | Delinquency | 8 |
| 4.7 | Acceptance of Rent | 8 |
| 5. | LESSEE'S OTHER OBLIGATIONS..... | 8 |
| 5.1 | Construction of improvements..... | 8 |
| 5.1.1 | Port Approval | 8 |

| | | |
|-------|---|----|
| 5.1.2 | Permits and Licenses..... | 8 |
| 5.2 | Maintenance and Repair | 8 |
| 5.3 | No Liens..... | 9 |
| 5.4 | Utilities..... | 9 |
| 5.5 | Fire Safety..... | 10 |
| 5.6 | Port Access to Premises..... | 10 |
| 6. | PORT AUTHORITY AND OBLIGATIONS | 10 |
| 6.1 | Delivery of Premises..... | 10 |
| 6.2 | Quiet Enjoyment | 11 |
| 6.3 | Condition of Premises..... | 11 |
| 6.4 | Port Maintenance and Repair Obligations | 11 |
| 6.5 | Joint Inspection | 11 |
| 6.6 | Notice of Maintenance and Repairs..... | 12 |
| 6.7 | Security Services/Limitation of Liability..... | 12 |
| 7. | ENVIRONMENTAL OBLIGATIONS OF TENANT..... | 12 |
| 7.1 | Definitions..... | 12 |
| 7.1.1 | Environmental Law..... | 12 |
| 7.1.2 | Hazardous Substance | 12 |
| 7.1.3 | Environmental Cost..... | 13 |
| 7.1.4 | Hazardous Substance Release..... | 13 |
| 7.2 | General Environmental Obligations of Lessee | 13 |
| 7.3 | Use of Hazardous Substances | 13 |
| 7.4 | Tank Facility | 14 |
| 7.5 | Port's Storm Water Conveyance System..... | 14 |
| 7.5.1 | General | 14 |
| 7.5.2 | Materials Management..... | 14 |
| 7.5.3 | Individual Permit..... | 14 |
| 7.5.4 | Storm Water Sampling..... | 15 |
| 7.5.5 | Port's Rights | 15 |
| 7.5.6 | Permission to Enter and Inspect..... | 15 |
| 7.5.7 | Entry Notice | 15 |
| 7.6 | Contaminated or Treated Media | 15 |
| 7.7 | Environmental Audits | 16 |
| 7.7.1 | Initial Audit | 16 |
| 7.7.2 | Special Audit..... | 16 |
| 7.7.3 | Exit Audit..... | 16 |
| 7.8 | Environmental Inspection | 17 |
| 7.9 | Lessee's Liability | 17 |
| 7.9.1 | Hazardous Substance Releases | 17 |
| 7.9.2 | Conditions Not Associated With the Lessee and Undiscovered at the Time of Initial Audit..... | 17 |
| 7.9.3 | Exception for Contaminated Media | 17 |
| 7.10 | Environmental Remediation | 17 |

| | | |
|--------|--|----|
| 7.10.1 | Immediate Response | 17 |
| 7.10.2 | Remediation | 18 |
| 7.10.3 | Report to the Port | 18 |
| 7.10.4 | Port's Approval Rights | 18 |
| 7.11 | Notice | 18 |
| 7.12 | Port's Right to Perform on Behalf of Lessee | 18 |
| 8. | INDEMNITY, INSURANCE | 19 |
| 8.1 | General Indemnity; Reimbursement for Damages | 19 |
| 8.2 | Insurance Requirements | 19 |
| 8.2.1 | Statement of Self Insurance | 19 |
| 8.2.2 | Certificates; Notice of Cancellation | 19 |
| 8.2.3 | Additional Insured; Separation of Insureds | 20 |
| 8.2.4 | Primary Coverage | 20 |
| 8.2.5 | Company Ratings | 20 |
| 8.3 | Required Insurance | 20 |
| 8.3.1 | General Liability Insurance | 20 |
| 8.3.2 | Automobile Liability Insurance | 20 |
| 8.3.3 | Workers' Compensation/Employer's Liability Insurance | 21 |
| 8.3.4 | Vessel Insurance | 21 |
| 8.3.5 | Pollution Legal Liability | 21 |
| 8.3.6 | Lessee's Risks | 21 |
| 8.4 | Waiver of Subrogation | 22 |
| 8.5 | Survival of Indemnities | 22 |
| 9. | DAMAGE OR DESTRUCTION | 22 |
| 9.1 | General | 22 |
| 9.2 | Reconstruction | 22 |
| 9.3 | Termination | 22 |
| 9.4 | Rent Reduction | 23 |
| 10. | TERMINATION | 23 |
| 10.1 | Duties on Termination | 23 |
| 10.2 | Permanent Alterations | 23 |
| 10.3 | Lessee's Personal Property | 23 |
| 10.3.1 | Removal Requirement | 23 |
| 10.3.2 | Holding Over | 23 |
| 11. | DEFAULT | 24 |
| 11.1 | Event of Default | 24 |
| 11.1.1 | Default in Rent | 24 |
| 11.1.2 | Default in Other Covenants | 24 |
| 11.1.3 | Abandonment | 24 |
| 11.2 | Remedies on Default | 24 |
| 11.2.1 | Re-entry | 25 |

| | | |
|--------|--|----|
| 11.2.2 | Reletting | 25 |
| 11.2.3 | Rent Recovery | 25 |
| 11.2.4 | Recovery of Damages | 26 |
| 11.3 | Termination of Lease | 26 |
| 11.4 | Remedies Cumulative and Nonexclusive | 26 |
| 11.5 | Port Curing of Lessee's Defaults | 26 |
| 11.6 | Default by Port | 27 |
| 12. | ASSIGNMENT, SUBLEASE, MORTGAGE, AND TRANSFER | 27 |
| 12.1 | General Prohibition | 27 |
| 12.2 | Right to Sublet to Lessee's Contractor | 27 |
| 12.3 | Transfer by the Port | 27 |
| 12.4 | Estoppel Certificates | 28 |
| 13. | GENERAL PROVISIONS | 28 |
| 13.1 | Covenants, Conditions, and Restrictions | 28 |
| 13.2 | Governing Law | 28 |
| 13.3 | Mediation | 28 |
| 13.4 | Port and Lessee | 29 |
| 13.5 | No Benefit to Third Parties | 29 |
| 13.6 | Notices | 29 |
| 13.7 | Time is of the Essence | 30 |
| 13.8 | Nonwaiver | 30 |
| 13.9 | Survival | 30 |
| 13.10 | Partial Invalidity | 30 |
| 13.11 | No Light or Air Easement | 31 |
| 13.12 | Lease Subject to Bonds and Ordinances | 31 |
| 13.13 | Calculation of Time | 31 |
| 13.14 | Headings | 31 |
| 13.15 | Exhibits Incorporated by Reference | 31 |
| 13.16 | Modification | 31 |
| 13.17 | No Brokers | 31 |
| 13.18 | Attorney Fees | 31 |
| 13.19 | Entire Agreement | 32 |
| 13.20 | Provisions Applicable to Others | 32 |
| 13.21 | Successors | 32 |
| 13.22 | Joint and Several Obligations | 32 |
| 13.23 | Execution of Multiple Counterparts | 32 |
| 13.24 | Defined Terms | 32 |
| 13.25 | No Limit on Port's Powers | 32 |
| 13.26 | No Limits on Lessee's Powers | 33 |

TERMINAL 1 NORTH LEASE

This Terminal 1 North Lease (the "Lease"), dated effective August 1, 2002 ("Effective Date"), is between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and THE CITY OF PORTLAND, a municipal corporation (the "Lessee").

RECITALS

A. The Port is the owner of certain real property known as Terminal 1 (the "Terminal") located at 2500 N.W. Front Avenue in the City of Portland, Multnomah County, Oregon, further described in attached **Exhibit A** (the "Premises"). The Premises consists of approximately 403,671 square feet of yard area ("Yard Area"), Warehouse 101 ("Warehouse 101") consisting of approximately 67,220 square feet (including approximately 2,520 square feet of office space) and Warehouse 103 ("Warehouse 103") consisting of approximately 61,776 square feet (including approximately 550 square feet of office space), described in attached **Exhibit A**. Warehouse 101 and Warehouse 103 are sometimes referred to in this Lease collectively as the "Warehouse."

B. Lessee desires to lease the Premises from the Port for any activities associated with its Combined Sewer Overflow Project.

C. The Port is willing to Lease the Premises to Lessee on the terms and conditions stated herein.

NOW, THEREFORE, the parties, intending to be legally bound by the terms of this Lease and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, agree as follows:

1. AGREEMENT TO LEASE PREMISES

1.1 Agreement to Lease

The Port hereby leases the Premises to Lessee and Lessee leases the Premises from the Port, for the Permitted Uses described below and on the terms and conditions stated in this Lease.

1.2 Phasing of Premises

The Port will make the Premises available to Lessee in two phases, as soon as they have been vacated by existing tenants, as outlined below:

1.2.1 Phase 1 Premises

Phase 1 of the Premises will include Warehouse 103 and Yard Area surrounding Warehouse 103, Yard Area between Warehouse 101 and Warehouse 3 and to the north of Warehouse 101 (the "Phase 1 Yard Area"), Common Areas and Dock Area, all as shown on Exhibit A. Benson Industries, Inc. ("Benson") is currently a tenant in Warehouse 103, and in portions of the Phase 1 Yard Area. Benson's tenancy with

respect to Warehouse 103 and portions of the Phase 1 Yard Area is anticipated to expire by May 31, 2002. Phase 1 of the Premises will be available to Lessee as of August 1, 2002, except as set out in Section 1.2.3 below.

1.2.2 Phase 2 Premises

Phase 2 of the Premises will include all of Phase 1, plus Warehouse 101, Yard Area to the south of Warehouse 101 and the area designated on Exhibit A as the Multnomah County Holding Area (the "Phase 2 Yard Area"), all as shown on Exhibit A. Multnomah County (the "County") is currently a tenant in the Multnomah County Holding Area, and this tenancy is anticipated to expire by September 30, 2002. Phase 2 of the Premises will be available to Lessee as of October 1, 2002, except as set out in Section 1.2.3 below.

1.2.3 Liability for Failure of Current Tenants to Vacate

The Port shall not be liable to Lessee if either Benson or the County fails to vacate as and when required by their respective leases, although, if Benson or the County were to holdover beyond their respective termination dates specified above, the Port shall make reasonable efforts and take reasonable action to evict Benson or the County as soon as possible after such anticipated expiration date(s).

2. USE OF THE PREMISES

2.1 Permitted Uses

Subject to the limitations set forth in this Section and elsewhere in this Lease, Lessee shall use the Premises only for activities associated with Lessee's Combined Sewer Overflow project, in accordance with applicable Laws ("**Permitted Uses**").

2.2 Use of Dock at Terminal; DSL Lands

As part of the Permitted Uses, Lessee may use the dock comprising part of the Terminal for docking barges for the loading and removal of equipment and excavated material, subject to all provisions of this Lease. In addition, if Lessee uses the dock at the Terminal for mooring barges or any other vessels as part of its operations, Lessee shall be responsible for obtaining a lease, if necessary, from the Oregon Division of State Lands ("DSL") for the use of its submerged lands. Lessee shall be responsible for payment of any rent under any DSL Lease.

2.3 Limits on Use

Lessee's rights to use the Premises are subject to all easements or other matters of record affecting the Premises. The Premises may be used for no use, other than Permitted Uses, without the Port's prior written consent.

2.4 Compliance with Laws

Lessee's activities on or use or possession of the Premises must comply at all times with all applicable laws, ordinances, codes, rules and regulations of state, federal, city, county, the Port or other public government authorities or agencies, including, without limitation, all Environmental Law, as defined in Section 7.1.1 (collectively, "Laws") that are applicable to this Lease and Lessee's use of the Premises. Lessee shall promptly provide the Port with copies of all communications from any government entity, agency or regulatory authority or body which relate to Lessee's noncompliance or alleged noncompliance with any Laws relating to its operations on the Premises. Lessee shall correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use.

2.5 Common Areas

2.5.1 Right to Use

Lessee shall have a nonexclusive right to use Common Areas, as depicted in Exhibit A, in the Terminal in common with the Port and with others to whom the Port has granted such right. Lessee shall not block any portion of the Common Areas, in any way that may prevent use by the Port or other tenants or users. Except as set forth in this Section, no other appurtenant rights are granted as part of this Lease. The Port shall make all reasonable efforts to require other tenants and authorized users to refrain from obstructing Common Areas.

2.5.2 Port Work in the Common Area

Should the Port, of its own accord, undertake any repair, maintenance or improvement work in or on the Common Areas, the Port shall have no liability for interference with Lessee's use of the Common Areas which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. The Port shall coordinate with Lessee and take all reasonable steps to avoid or minimize interference with Lessee's activities in the Common Areas. Rent shall not be reduced during any such repair period. Any repair of damage caused by negligence or breach of this Lease by Lessee, Lessee's employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be made at Lessee's sole expense.

2.5.3 Entrance Gate

Lessee shall use, and cause its agents, employees, representatives, invitees, and all vehicle traffic associated with Lessee's operations to use, Gates 15, 18, 21, 22 and 25, as shown in attached Exhibit A, as the primary ingress and egress route for access to and from the Premises. Lessee's use of Gates 22 and 25 shall not be exclusive to Lessee but shall be shared with other Port tenants and users of the Terminal. Lessee shall provide a new gate to Benson, identified as Gate 21B on Exhibit A. Lessee shall not be responsible for the operation, maintenance and security of Gate 21B. Lessee shall

cooperate with other tenants and users of the Terminal in keeping Gate 25 closed when not in use. The Port shall have no liability to Lessee for any loss resulting from the failure of the Port, other tenants, or other parties to close gates to the Terminal.

2.5.4 Load Restrictions

Lessee shall not use the areas of the Terminal located on or over the dock in any way that causes the uniform live load to exceed three hundred (300) pounds per square foot as shown on attached **Exhibit A** (the "**Dock Area**"), except as expressly permitted by this paragraph. The Port provides no warranty as to weight load conditions. If Lessee intends to exceed these limits, Lessee is responsible for performing its own engineering and condition studies to determine what structural maintenance or retrofit is necessary to support the planned load, and all such work must be performed at Lessee's sole expense, after prior written approval by the Port of plans and specifications for such work, and in conformance with all provisions of Section 5.1.

2.5.5 Right to Lease to Others

The Port reserves the right to lease and to permit the use of any portion of the Terminal not included in the Premises to other tenants and users and to provide such other tenants and users with access to Common Areas within the Terminal. The Port shall not be liable for the actions or omissions or other tenants or users of the Terminal. Lessee shall not interfere with the authorized activities of other tenants or users of the Terminal in the Common Areas or portions of the Terminal not included within the Premises.

3. TERM

3.1 Term

This Lease shall be binding upon the parties as of the Effective Date. The term of this Lease (the "**Lease Term**") shall commence on August 1, 2002 (the "**Commencement Date**"), and shall continue, unless the Lease is sooner terminated under the provisions of this Lease, until December 31, 2006 (the "**Expiration Date**"). The Lease Term may be extended as provided in Section 3.2 and if extended, the "Expiration Date" shall be the last day of the Extension Term as defined in Section 3.2.

3.2 Option to Extend Lease Term

Lessee shall have two (2) options (each an "**Extension Option**") to extend this Lease for two (2) successive terms of one additional year each (each an "**Extension Term**"). The terms and conditions set forth in this Lease (as the same may be amended from time to time) shall continue during the Extension Term except that: (i) Basic Rent, as defined in Section 4.1, shall be recalculated pursuant to Section 4.2.1; and (ii) Lessee shall no longer have the Extension Option which has been exercised. If an Event of Default exists, Lessee may not exercise the Extension Option until the Event of Default is

cured, and the Event of Default must be cured prior to the expiration of the time period within which Lessee may exercise the Extension Option, as described in Section 3.3.

3.3 Exercise of Option to Extend

Lessee may exercise each successive Extension Option by giving the Port written notice thereof not less than ninety (90) days prior to the last day of the then-expiring Lease Term or Extension Term, as the case may be. Failure to exercise any Extension Option in the manner and within the period provided in Section 3.2, or to satisfy or obtain a written waiver of any condition precedent to the right to exercise such Extension Option prior to the end of the then-expiring term, shall extinguish such Extension Option and any and all future Extension Options.

4. RENT

4.1 Rent

Lessee shall pay to the Port monthly rent for the Phase 1 Premises and the Phase 2 Premises as indicated below. Said monthly rent shall be referred to as "Basic Rent." All other sums which become payable by Lessee to the Port shall be considered "Additional Rent" due under this Lease. "Rent" as used herein, shall mean all such Additional Rent together with Basic Rent.

4.1.1 Phase 1 Premises Rent

Rent for the Phase 1 Premises, beginning August 1, 2002 shall consist of the following monthly amounts:

Warehouse 103: 61,776 square feet times \$0.23 per square foot per month, totaling \$14,208.48 per month.

Phase 1 Yard Area: 233,219 square feet times \$0.08 per square foot per month, totaling \$18,657.52 per month.

Dock Area: 81,236 square feet times \$0.05 per square foot per month, totaling \$4,061.80 per month.

4.1.2 Phase 2 Premises Rent

Rent for the Phase 2 Premises, beginning October 1, 2002, shall consist of Rent due for the Phase 1 Premises, plus the following monthly amounts:

Warehouse 101: 67,220 square feet times \$0.23 per square foot per month, totaling \$15,460.60 per month.

Phase 2 Yard Area: 89,216 square feet times \$0.08 per square foot per month, totaling \$7,137.28 per month.

4.1.3 Rent Adjustments Due to Holdover of Benson or County

Monthly rent shall be reduced on a per-square-foot and monthly basis to the extent any of the Premises is occupied by Benson and/or the County during any holdover period beyond their scheduled termination dates as set out in Section 1.2 above.

4.1.4 Rent Adjustments Due to Change in Premises

If Lessee determines that a portion of Warehouse 101 or Warehouse 103 has become unusable for the Permitted Uses, Lessee may request an adjustment in Rent, calculated on a per square foot basis. If a Rent adjustment is approved, the unusable area must then be secured by Lessee to ensure that it remains unused.

4.2 Adjustment to Basic Rent

4.2.1 CPI-U

At the beginning of the first Extension Period (the "Adjustment Date"), Basic Rent shall be adjusted based on any increase in the Consumer Price Index Rate described in this Section. Such adjustment shall be based on the change in the "Consumer Price Index - U.S. City Average for all Items for All Urban Consumers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U") over the initial Lease Term. Such adjustment shall be determined by multiplying the then-current Basic Rent by any percentage increase in the CPI-U from the Commencement Date to the Adjustment Date. Such adjustment shall be added to the prior year's Basic Rent for computing the Basic Rent for such subsequent year. The adjustment under this Section shall be made as soon as the applicable CPI-U information is available and, if delayed, shall be applied retroactively to the beginning of the period subject to the adjustment. In no case shall Basic Rent as adjusted be less than the Basic Rent in effect just prior to the adjustment. The Basic Rent for the second Extension Period shall be the same as for the first Extension Period.

4.2.2 Alternatives to CPI-U

In the event the CPI-U is discontinued, the "Consumer Price Index - U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor shall be used for making the computation. In the event the Bureau of Labor Statistics no longer maintains such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority reasonably selected by the Port shall be used for making the computation. If the CPI-U base year 1982-84 (or other base year for a substituted index) is changed, the figure used for the past year in making the computation in Section 4.2.1 shall accordingly be changed so that all increases in the CPI-U from the base year are taken into account notwithstanding any such change in such CPI-U base year.

4.3 Taxes

The Port and Lessee understand that no real estate taxes should come due under this Lease by virtue of the tax-exempt status of both the Port and Lessee. Nonetheless, Lessee agrees to pay before due all taxes, which after the Effective Date and before the expiration of this Lease may become a lien or which may be levied or assessed by the state, county, city, district or any other body upon the Premises, or Lessee's rights to use the dock, or upon any interest of Lessee acquired pursuant to this Lease, or any possessory right which Lessee may have in or to the Premises or the improvements thereon by reason of its occupancy thereof, as well as all taxes, assessments, user fees or other charges on all property, real or personal, owned by Lessee in or about said Premises (collectively, "**Taxes**"), together with any other tax or charge levied wholly or partly in lieu thereof. Taxes are considered Additional Rent under this Lease. If available by law, rule or order of the taxing authority, Lessee may make payments in installments. To the extent that Lessee qualifies for tax-exempt status, Lessee may apply for such exemption; however, unless an exemption is obtained, Lessee shall promptly pay all Taxes due under this Section. Not later than ten (10) days after the date any Tax is due, Lessee shall give to the Port a copy of the receipts and vouchers showing payment has been made as required by this Section. In the event that Lessee fails to pay Taxes on or before their due date, then, in addition to all other remedies set forth in Section 11, the Port shall automatically have the right, but not the obligation, to pay the Taxes and any interest and penalties due thereon, with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid.

4.4 Other Fees

Lessee shall be responsible for paying all other fees, assessments, charges and costs associated with the use, occupancy of and improvements to the Premises. In addition, Lessee will be responsible for all improvements to the Premises necessary to accommodate its use, including payment of permit fees, system development charges and utility connection fees associated with such improvements. All conditions imposed by the City of Portland upon Lessee's improvements must be complied with at Lessee's sole cost and expense.

4.5 Time and Place of Basic Rent Payment

Lessee shall make payment of the Basic Rent, in advance, on or before the first day of each and every calendar month ("**Due Date**"), without notice, and without offset, abatement, or deduction to the Port to the following address or such other address as the Port may later designate as provided herein:

The Port of Portland
Unit 27
P.O. Box 4900
Portland, OR 97208-4900

4.6 Delinquency

All Rent not paid by Lessee within 15 days of the Due Date shall bear a "**Delinquency Charge**" of nine percent (9%) per year, from the date of delinquency until paid. Imposition of the Delinquency charge shall not constitute a waiver of any other remedies available for failure to timely pay Rent. Acceptance of any Delinquency Charge by the Port shall in no event constitute a waiver of Lessee's Default.

4.7 Acceptance of Rent

The Port's acceptance of a late or partial payment of Rent and/or any Delinquency Charge shall not constitute a waiver of any Event of Default (defined in Section 11) nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. It is hereby agreed that any endorsements or statements appearing on checks of waiver, compromise, payment in full, or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in Default and obligated to pay all Rent due, even if the Port has accepted a partial or late payment of Rent.

5. LESSEE'S OTHER OBLIGATIONS

5.1 Construction of improvements

5.1.1 Port Approval

Except for the improvements described in attached **Exhibit B** [Easements], Lessee shall submit to the Port for review and approval, with regard to any permanent improvements, the following: (i) the name of the proposed contractor; (ii) final plans and specifications; (iii) a site-use plan; (iv) architectural renderings; and (v) as-built drawings after completion of work, as appropriate.

5.1.2 Permits and Licenses

All conditions imposed by the City of Portland or other governmental agencies upon the construction of Lessee's improvements must be complied with at Lessee's sole cost and expense. Lessee shall provide copies of all permits required for activities conducted on the Premises to the Port.

5.2 Maintenance and Repair

Subject to the Port's obligations under Sections 6.4 and 6.5 below, Lessee shall keep the Premises in good working order and repair and shall be responsible for regular upkeep, maintenance and minor repair of the warehouse floors, all warehouse doors, and all interior plumbing, excluding sprinkler systems. Lessee shall also maintain all paving

in the Dock Area and other Yard Area necessary to prevent damage to any existing improvements or any part of the Premises resulting from Lessee's operations. Lessee shall upgrade, if necessary for its operations, any existing on-site facilities. Without limiting the foregoing, Lessee's maintenance responsibilities shall include changing light bulbs, restroom cleaning and maintenance, fixing toilets, cleaning and housekeeping, minor repair of door fixtures or lifts used by Lessee, fixing broken windows, doors, or other fixtures, repairing loading docks, repairing or maintaining pavement within the Premises and repairing or maintaining any improvements installed by Lessee. Reasonable wear and tear excepted, Lessee shall return the Premises to the Port in as good condition as at the commencement of this Lease or in other condition acceptable to the Port and shall also be liable for any damage to the Premises caused by the use by Lessee or Lessee's agents, subtenants, employees, contractors, suppliers, licensees or invitees of the Premises. Lessee shall provide proper containers for trash and garbage and arrange and pay for janitorial and garbage services or make other arrangements to keep the Premises free and clear of rubbish, debris and litter at all times.

5.3 No Liens

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities (subject to the provisions of Section 5.4), furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. If any lien related to Permitted Uses is filed against the Premises, Lessee shall cause the lien to be discharged of record within 30 days. If Lessee fails to discharge a lien for which it is responsible within 30 days after its filing, the Port may pay the lien and request reimbursement from Lessee. Lessee shall not encumber the Premises or any improvements thereon without prior written approval of the Port.

5.4 Utilities

Electric, water and sanitary sewer services are provided to the Warehouses, and electricity to the Yard Area. Electric service to Warehouse 101 is submetered from a master Portland General Electric ("PGE") meter (which also services Warehouse 3, not leased by Lessee) and Lessee will be responsible for its submetered use. Lessee shall be responsible for providing its own electrical meter for Lessee operations, including lighting of Warehouses 101 and 103 and yard lights on the Premises. Lessee shall be responsible for payment directly to the power company for electricity for Lessee operations on the Premises. Water and sewer use by the tenant of Warehouse 3 is submetered and billed to that lessee by the Port after payment of the water bill for the Terminal. Lessee will be responsible for payment of the balance of the water and sewer bill for the Terminal, as Lessee's Premises constitute the remainder of the Terminal. Lessee must make arrangement for any other utilities required for its uses and promptly pay any charges for such utilities. If any upgrades to the utilities are required to accommodate Lessee's use of the Premises, the cost of such upgrades, including any permit or user fees shall be paid by Lessee. Installation of telephone or any upgrades by

Lessee shall not interfere with existing telephone service on the Port's Terminal 1 Property.

5.5 Fire Safety

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required or appropriate for Lessee's use of the Premises pursuant to applicable Laws or best management practices required by the Port's insurer.

5.6 Port Access to Premises

The Port and its representatives shall have the right to enter upon the Premises for the purposes of: (i) confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; (iii) inspecting and copying books and records of Lessee related to Lessee's performance of its obligations under this Lease, (iv) routine maintenance of the Warehouses and dock sprinkler systems; (v) to implement any remedial investigation, source control or other remedial activities that are required by the Oregon Department of Environmental Quality or the United States Environmental Protection Agency, and (vi) for any other lawful purpose. Such entry shall be made with reasonable advance notice and during normal business hours, when practical, except in cases of emergency or a suspected violation of this Lease or applicable law. Subject to such notice, the Port's representatives may enter the underground utility corridor located within the Warehouses as necessary to perform maintenance or repair operations. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry, except to the extent caused by the negligence or willful misconduct of the Port. The Port shall be given keys with which to gain access to the Premises and to unlock all gates or doors in, upon, or about any building located on the Premises. The Port shall have the right to use any and all reasonable means to open such gates or doors in an emergency in order to obtain entry into any such building located on the Premises, and Lessee releases the Port from any liability or damages, except to the extent cause by the negligence or willful misconduct of the Port, resulting from such action.

6. PORT AUTHORITY AND OBLIGATIONS

6.1 Delivery of Premises

Lessee shall have the right to possession of the Premises under this Lease as of the Commencement Date. The Port shall have no liability to Lessee for any delay in delivering possession, subject to Section 1.2, herein. Delayed possession shall not advance or delay the Expiration Date of this Lease.

6.2 Quiet Enjoyment

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights under this Lease and the rights of other tenants or users of the Terminal, Lessee's possession of the Premises will not be disturbed by the Port.

6.3 Condition of Premises

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the environmental condition of the Premises, the suitability of the Premises for Lessee's intended uses, or the availability of utilities needed for Lessee's intended purposes. The Port acknowledges that after reasonable inquiry and to the best of its knowledge it has provided to Lessee copies of all reports and information regarding the condition of the Premises. For purposes of the foregoing sentence, (a) "reasonable inquiry" shall mean inquiry of the Port's managers with property management or environmental management responsibility of the Premises and review of Port's records and (b) "knowledge" shall mean the current actual knowledge of such managers. It shall be Lessee's responsibility to determine that the weight limitations set forth in Section 2.5.4 are met, and Lessee shall be responsible for any personal injury or property damage that results from excess loads.

6.4 Port Maintenance and Repair Obligations

The Port shall deliver the Premises to Lessee in working order, and shall perform any repairs reasonably agreed upon by both parties at the initial Joint Inspection required in Section 6.5. Thereafter, the Port shall be responsible for maintaining and repairing the Warehouse and dock sprinkler systems and shall provide reasonable notice of such activities to Lessee; provided, however, that the Port shall bear no liability in the event such sprinkler systems fail to operate properly. The Port will also be responsible for maintenance and capital replacement of the roofs and walls of the Warehouse. Upon reasonable notice from the Port, Lessee shall provide the Port with access to perform such maintenance, repair and replacement obligations. The Port will perform no maintenance or retrofit of the dock structures, Yard Area paving, or rail track. Except as stated herein, the Port shall have no other maintenance or repair responsibilities. The Port shall not be responsible for repairing damage to the Premises caused by Lessee, which shall be the responsibility of the Lessee. The Port shall have no liability for interference with Lessee's use of the Premises which might result from the Port's repair and maintenance efforts, and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Rent shall not be reduced during any such repair period. Any repair of damage caused by negligence or breach of this Lease by Lessee or Lessee's subtenants, employees, agents, contractors, licensees or invitees shall be Lessee's responsibility and shall be made at Lessee's sole expense.

6.5 Joint Inspection

A joint inspection of the Premises by the Port and Lessee shall be performed at the commencement of the Lease as to the Phase I Premises, the commencement of the

Lease as to the Phase II Premises and at the expiration of the Lease to assess the condition of the entire Premises and to document any necessary maintenance and repairs ("Joint Inspection"). Such Joint Inspections may include a videotaped recording of the condition of the Premises and shall be documented in writing by the Port after review and approval by Lessee ("Joint Inspection Report") and shall include a list of all necessary maintenance and repairs to the Premises. Maintenance and repairs shall be completed by the responsible party, in accordance with Sections 5.2 and 6.4, in a timely manner. A copy of each Joint Inspection Report shall be provided to Lessee within thirty (30) days after completion of each Joint Inspection.

6.6 Notice of Maintenance and Repairs

During the Lease Term, Lessee shall notify the Port in writing of any necessary maintenance and repairs that are Lessee's responsibility which Lessee requests that the Port perform and which were not identified during the Joint Inspection. Responsibility for bearing costs for and performing said maintenance and repairs shall be determined in accordance with Sections 5.2 and 6.4. The Port shall notify Lessee of the Port's response to Lessee's request, to the extent reasonably possible, within seven (7) business days of receipt of notice.

6.7 Security Services/Limitation of Liability

The Port provides no security services for the Premises, Common Areas or Terminal, except that the Port contracts with a security service to respond to alarms from the Port-maintained sprinkler system. The Port shall bear no liability for such security service's failure to respond to such alarms or for property damage or personal injury that may result from such failure to perform because of the lack of security services.

7. ENVIRONMENTAL OBLIGATIONS OF TENANT

7.1 Definitions

For the purposes of this Lease, the following definitions shall apply.

7.1.1 Environmental Law

"Environmental Law" shall mean applicable federal, State of Oregon and local laws, regulations, rules, permit terms, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.

7.1.2 Hazardous Substance

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous, or regulated wastes or materials,

or any other similar term in or under any Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum, and petroleum-derived products.

7.1.3 Environmental Cost

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (i) any actual violation of or noncompliance with any applicable Environmental Law; (ii) claims for damages, response costs, natural resources restoration or damages, regulatory oversight costs or fees, audit costs, fines, fees, or other relief relating to matters addressed in any applicable Environmental Law; (iii) Hazardous Substance Releases as defined in Section 7.1.4; and (iv) violations of any environmental provisions of this Lease. Costs and damages, as used in this Section, shall include, but not be limited to: (a) costs of evaluation, testing, analysis, remediation, removal, disposal, monitoring, and maintenance; (b) Port internal staff time and fees of attorneys, engineers, consultants and experts, whether or not taxable as costs, incurred at, before, or after trial, appeal, on petition for review or administrative proceedings; (c) lost revenue and natural resources damages; and (d) diminution of value, loss, or restriction on use of property; and (e) the cost of decommissioning and removing any underground, mobile or aboveground storage tank and related facilities.

7.1.4 Hazardous Substance Release

"Hazardous Substance Release" shall mean the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable Environmental Law.

7.2 General Environmental Obligations of Lessee

Lessee shall manage and conduct all of its activities on or relating to the Premises: (i) in compliance with applicable Environmental Law and the environmental provisions of this Lease; (ii) in cooperation with the Port in the Port's efforts to comply with applicable Environmental Law; and (iii) in adherence with best management practices applicable to Lessee's use of the Premises. Lessee shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of laws or regulations by any party on or relating to the Premises.

7.3 Use of Hazardous Substances

Lessee may use, handle or store on the Premises, in accordance with manufacturers' instructions and applicable laws, only those Hazardous Substances reasonably and necessarily used in the course of Lessee's Permitted Uses of the Premises. Lessee shall manage and dispose of Hazardous Substances in compliance with applicable laws. If Lessee knows or has reasonable cause to believe that any release of a Hazardous Substance has taken place or has come to be located on or beneath the Premises, Lessee must immediately give written notice of that condition to the Port.

7.4 Tank Facility

Lessee shall comply with the provisions of the attached Above Ground and Mobile Storage Tank Use Provisions form (**Exhibit C**), the terms of which are expressly incorporated into this Lease by reference.

7.5 Port's Storm Water Conveyance System

7.5.1 General

The Port is the permittee under a National Pollutant Discharge Elimination System Municipal Separate Storm Sewer Permit (Permit No. 108015) ("**MS4 Permit**") that regulates the discharge of storm water into the storm water conveyance system on the Premises and ultimately to waters of the United States. Any discharge into the Port-owned storm water conveyance system located on the Premises (the "**Port's System**") shall be pursuant to and only in compliance with Environmental Law and the Port's MS4 Permit, including without limitation any best management practices required by such MS4 Permit. The discharge of Hazardous Substances into the Port's System is prohibited. Lessee shall not install and shall not use any types of Class V underground injection controls such as French drains, sumps, or dry wells on the Premises without the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion. A copy of the Port's MS4 Permit has previously been provided to Lessee.

7.5.2 Materials Management

In conducting the Permitted Uses on the Premises, Lessee shall manage any soils and excavated materials to prevent a discharge of soil or sediment into the Port's System. Lessee shall implement appropriate measures for erosion control and management of storm water at the Premises consistent with the City of Portland's Erosion Control Manual, and any specifications for construction of Lessee's West Side Combined Sewer Overflow Project facilities to the extent consistent with Environmental Law.

7.5.3 Individual Permit

If Lessee's activity is such that an individual or separate National Pollution Discharge Elimination System ("**NPDES**") storm water permit is required, then that permit must be obtained prior to discharging into the Port's system and shall be submitted to the Port for its review and approval, which shall not be unreasonably withheld, conditioned or delayed. If Lessee is required to obtain an individual NPDES permit, Lessee shall provide to the Port, by October 1 of each year, copies of documentation reflecting its individual permittee status. Such documentation shall include any notices of intent, acknowledgments from the Oregon Department of Environmental Quality ("**DEQ**"), permits, monitoring reports, and storm water pollution control plans associated with Lessee's storm water discharge activities at or from the Premises.

7.5.4 Storm Water Sampling

If Lessee undertakes sampling of storm water from the Premises for any purpose, Lessee shall provide the Port with advance notice and provide copies of any and all storm water sampling results and associated chain-of-custody documents and quality analysis/quality control information obtained by Lessee within ten (10) days of receipt of the laboratory results.

7.5.5 Port's Rights

The Port shall have the right to direct Lessee to immediately cease any discharge or modify on-site management practices if the Port determines that any such activities are not in accordance with the Port's MS4 Permit, any applicable Environmental Law, or the terms of this Lease.

7.5.6 Permission to Enter and Inspect

Lessee hereby grants the Port or its designated Port's representative, upon receipt of reasonable notice, permission to enter upon any area of Lessee's operations at the Premises for the purposes of inspection of Lessee's best management practices that may affect the Port's compliance with its MS4 Permit or any applicable Environmental Law.

7.5.7 Entry Notice

Except in the case of an emergency as described herein, the Port shall give Lessee at least twenty-four (24) hours advance notice before making entry onto the Premises and shall attempt to schedule any such entry to minimize interference with Lessee's operations. In the event of an emergency when prompt investigation and action is necessary to avoid imminent violation of the Port's MS4 Permit or Environmental Law, the Port will make a reasonable attempt to give advance notice but may exercise its right of entry under this Section without delay.

7.6 Contaminated or Treated Media

Lessee shall not store, treat, deposit, place or dispose of treated or contaminated media, including soil, rock, slurry, industrial by-products, liquid waste or waste ("Contaminated Media") on the Premises, except in accordance with the Lessee's Contaminated Media Management Plan, a copy of which will be provided to the Port. Lessee shall bring no Contaminated Media, soil, rock, slag, debris, recycled concrete, recycled asphalt, dredged material, organic material or other material to be used as permanent fill onto the Premises without first obtaining the written consent of the Port, which shall not be unreasonably withheld, conditioned or delayed. Furthermore, the Port shall respond to any request for consent within five (5) business days after the Port receives written request therefor. The Lessee assumes ownership of and all risks of liability associated with, any excavation, removal, post-removal treatment or transportation of Contaminated Media on, to or from the Premises in connection with the construction of its Combined Sewer Overflow Project facilities on-site, including the

contemplated shaft and tunnel facilities, and the Port shall have no obligation to incur Environmental Cost associated with such Contaminated Media. Lessee shall have no obligation to incur Environmental Costs associated with any such Contaminated Media outside the excavations for the shaft, pipeline and tunnel facilities and shall have no obligation to incur Environmental Costs for any preexisting Hazardous Substance contamination located outside the shaft, pipeline and tunnel facilities.

7.7 Environmental Audits

7.7.1 Initial Audit

The initial audit of the Premises shall consist of the Lessee's report of the subsurface testing conducted on the Premises by the Lessee in July 2001 and February 2002, the Port's report of the Port's Revised Work Plan For Site Investigation, and the report of the Lessee's environmental audit based on ASTM Standard E 1527-00 or E 1528-00, as appropriate ("**Initial Audit**"). Lessee has approved the scope and procedures of the Initial Audit with the understanding that it shall serve as a baseline for determination of future environmental liability, as described in more detail in Section 7.9.

7.7.2 Special Audit

If the Port, at any time during the Lease Term or any extension thereof, has reason to suspect that Hazardous Substances are being or have been used, handled, stored, generated, disposed, placed and/or transported contrary to the requirements of this Lease, in violation of applicable Environmental Laws, or in any manner that has resulted, or is likely to result, in a Hazardous Substance Release, then the Port may, after written communication of those reasons to Lessee, without limiting its other rights and remedies, conduct a special audit ("**Special Audit**") of the Premises and submerged lands in the vicinity of the Premises with respect to the environmental matters of concern to the Port, consistent with ASTM Standards for environmental site assessment and environmental compliance auditing or any equivalent successor standard promulgated by the United States Environmental Protection Agency. If a violation is found, Lessee will be required to reimburse the Port for the cost of the Special Audit. If no violation is found, the Port will pay for the Special Audit.

7.7.3 Exit Audit

At the expiration or termination of this Lease, the Port and Lessee shall conduct, at Lessee's sole expense, an Environmental Audit ("**Exit Audit**") of the Premises to determine: (i) the environmental condition of the Premises; (ii) whether any Hazardous Substance Release has occurred on or about the Premises during Lessee's tenancy; and (iii) whether there is evidence of any violation of applicable Environmental Laws or the environmental provisions of this Lease. The scope of the Exit Audit shall be consistent with ASTM Standards E 1527 and E 1528 for environmental site assessment, or any equivalent successor standard promulgated by the United States Environmental Protection Agency. The Exit Audit shall be performed not more than sixty (60) days prior to the scheduled Expiration Date of this Lease or, in the event this Lease is

terminated prior to the Expiration Date for any reason, the Exit Audit shall be completed within sixty (60) days of such actual termination date.

7.8 Environmental Inspection

The Port reserves the right at any time after reasonable notice to Lessee, to inspect the Premises, Lessee's operations on and use of the Premises, and Lessee's environmental records.

7.9 Lessee's Liability

7.9.1 Hazardous Substance Releases

Lessee shall be responsible for any Hazardous Substance Release on or from the Premises and the Environmental Cost arising therefrom, on other properties, in the air or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Lessee's occupancy or use of the Premises occurring at any time during the Lease Term or continuing after the Lease Term.

7.9.2 Conditions Not Associated With the Lessee and Undiscovered at the Time of Initial Audit

The Initial Audit shall be used as a baseline for determination of future Lessee liability. If the presence of a Hazardous Substance, a Hazardous Substance Release, violation of applicable Environmental Laws or violation of an environmental provision of this Lease is discovered or disclosed, that was not discovered or disclosed in the Initial Audit and it is not associated with the Lessee, its contractors or employees activities or omissions on the Premises, then Lessee and the Port shall perform an equally funded investigation to determine the cause of and responsibility for such matter. In the event the parties agree that the Port or the Lessee is responsible for such matter, the responsible party shall reimburse the other its Environmental Cost associated with the investigation and shall promptly perform corrective actions regarding such matter pursuant to the terms of this Lease.

7.9.3 Exception for Contaminated Media

The foregoing Section 7.9.2 is subject to the provisions of Section 7.6 above.

7.10 Environmental Remediation

7.10.1 Immediate Response

In the event of a violation of applicable Environmental Laws, a violation of an environmental provision of this Lease, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Lessee is responsible under this Lease, Lessee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain, and stop, the Hazardous Substance Release and remove the Hazardous Substance.

7.10.2 Remediation

Lessee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release on or from the Premises is remediated and that any violation of any applicable Environmental Laws or environmental provisions of this Lease are corrected. Lessee shall remediate, at Lessee's sole expense, all Hazardous Substances for which Lessee is responsible under this Lease or under any applicable Environmental Laws, and shall restore the Premises or other affected property or water to its baseline condition, as established in the Initial Audit or to other condition acceptable to the Port. Rent shall not be reduced during any such remediation period.

7.10.3 Report to the Port

Within thirty (30) days following completion of any investigatory, containment, remediation and/or removal action required by this Lease, Lessee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.

7.10.4 Port's Approval Rights

Except in the case of an emergency or an agency order requiring immediate action, Lessee shall give the Port advance notice before beginning any investigatory, remediation or removal procedures. The Port shall have the right to (i) review, comment on, and approve such procedures and (ii) require revisions to any procedures not in compliance with Environmental Laws. The Port will have the right to require Lessee to seek a statement from DEQ of "No Further Action."

7.11 Notice

Lessee shall promptly notify the Port upon becoming aware of: (i) a violation or alleged violation of any applicable Environmental Laws related to the Premises or to Lessee's occupation or use of the Premises or any environmental provision of this Lease; and (ii) any Hazardous Substance Release on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any business day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number is: (503) 335-1111.

7.12 Port's Right to Perform on Behalf of Lessee

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving Lessee fifteen (15) days' written notice, to perform its obligations arising under this Lease and charge Lessee the resulting Environmental Cost, plus a Delinquency Charge thereon from the date any funds were expended by the Port. The Port may not commence performance on behalf of Lessee under this Section if, within the fifteen (15) day notice period, Lessee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

8. INDEMNITY, INSURANCE

8.1 General Indemnity; Reimbursement for Damages

To the extent allowed under Oregon law, Lessee agrees to defend, indemnify, and hold harmless the Port from and against, and reimburse the Port for all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of, or use or occupancy of the Premises by Lessee, its agents, contractors, employees or assignee(s). To the extent allowed under Oregon law, the Port agrees to indemnify, hold harmless and defend Lessee, its commissioners, officers and employees from and against and to reimburse Lessee for all claims, actions, damages, injuries, costs, loss or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of, or the use or occupancy of the Premises by the Port, its agents, contractors or employees.

8.2 Insurance Requirements

8.2.1 Statement of Self Insurance

The Port understands that Lessee is now and historically has been covered for property and liability exposures through major worldwide insurance programs with large self-insured retentions. Losses that fall within retained levels are paid through the financial resources of the Lessee and are administered under Lessee's "Self Administration Claims Program." The Port's ordinary and usual contractual insurance requirements fall within the level of such retention. The Port accepts Lessee's said program in lieu of and in complete fulfillment of the Port's insurance requirements so long as such self-insurance program is in effect. Lessee will furnish to the Port a certificate evidencing that such a program is in effect, and Lessee will notify the Port in writing if at any time during the term of this Lease or any extension thereof if such program is discontinued.

8.2.2 Certificates; Notice of Cancellation

On or before the Effective Date and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance policies required under this Section. No insurance policy may be canceled, materially reduced, or non-renewed without at least thirty (30) days' prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the Lease Term. Insurance allowed to lapse without Port consent shall be deemed an immediate Event of Default under this Lease; provided that, if Lessee should complete its Combined Sewer Overflow Project early and terminate this Lease, the obligation to maintain insurance and provide notification to the Port shall expire with termination. The Port shall also be given certified copies of Lessee's policies of insurance, upon request.

8.2.3 Additional Insured; Separation of Insureds

The Port shall be named as an additional insured in each general liability policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Office ("ISO"), or its successor organization. Lessee shall require each contractor entering onto the Premises for construction purposes to name the Port as an additional insured on any policy of liability insurance related to the construction.

8.2.4 Primary Coverage

The required policies shall provide that the coverage is primary and will not seek any contribution from any insurance or self-insurance carried by the Port.

8.2.5 Company Ratings

All policies of insurance must be written by companies having an A.M. best rating of "A-" or better, or equivalent. The Port may, upon thirty (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

8.3 Required Insurance

At all times during this Lease, Lessee shall provide and maintain the following types of coverage.

8.3.1 General Liability Insurance

Lessee and Lessee's contractor(s) shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from the Premises (including loss of use thereof), operations, independent contractors, mobile equipment, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall include coverage for explosion, collapse, and underground ("xcu" excavation) hazards. Such coverage shall be written on an ISO form CG 00 01 01 96 (or a substitute form providing equivalent coverage) in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. Coverage shall include fire legal liability insurance in an amount of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence.

8.3.2 Automobile Liability Insurance

Lessee shall provide a certificate of self-insurance and Lessee's contractor(s) shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property, including loss of use thereof, and relating in any way to the use, loading, or unloading of any of Lessee's automobiles (including owned, hired, and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS

(\$1,000,000.00) each accident. Because mobile storage tanks may be considered automobiles when driven to and from the Premises, such coverage shall include liability for mobile equipment.

8.3.3 Workers' Compensation/Employer's Liability Insurance

Lessee and Lessee's contractor(s) shall maintain in force workers compensation insurance for all of Lessee's and Lessee's contractor's employees subject to the requirements of Oregon law.

8.3.4 Vessel Insurance

If vessels are used in connection with this Lease, Lessee or Lessee's contractor shall maintain in force coverage for protection and indemnity insurance in an amount not less than \$1,000,000 per occurrence and shall name the Port as an additional insured. Vessels shall be insured for water pollution liability losses in an amount not less than the greater of Oil Pollution Act statutory limit, \$1,000,000 or the limits required by other state and federal environmental laws, if applicable. The master and crew of the vessel shall be covered for compensation under Jones Act. The Lessee or its contractor(s), whichever is applicable, shall provide evidence of the required coverage; if the vessel owner (if different) is required to carry the insurance, a copy of the owner's certificate(s) of insurance shall be provided to the Port. If the work included work in or over water from vessels, any exclusion of such operations in the contractor's or Lessee's commercial general liability policy shall be removed by endorsement and a copy shall be provided to the Port.

8.3.5 Pollution Legal Liability

Lessee and Lessee's contractor(s) shall maintain a separate policy or policies that extend coverage for claims arising out of environmental impairment liability for gradual, sudden and accidental discharge or spill of pollutants on land and on water, including first party clean up and remediation of the Premises. Such coverage shall specifically address the loading and unloading of fuel to and from the above ground storage tanks and mobile storage tanks, if applicable. Such coverage shall be extended to include the wrongful delivery or misdelivery of fuel. Coverage shall be in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) per claim. Coverage may be a combination of endorsements to Lessee's commercial general liability and automobile liability policies, stand-alone insurance and self-insurance, subject to approval by the Port.

8.3.6 Lessee's Risks

Port insurance covers the shell of the Warehouses and the dock structures only. Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks.

8.4 Waiver of Subrogation

Lessee waives any right of action that it and/or its insurance carrier(s) might have against the Port (including the Port's commissioners, officers, employees and agents) for any loss, cost, damage, or expense (for purposes of this paragraph, collectively "Loss") covered by any property insurance policy or policies or any self-insurance maintained or required to be maintained pursuant to this Lease. The Port waives any right of action that it and/or its insurance carrier(s) might have against Lessee (including Lessee's commissioners, officers, employees and agents) for any loss, cost, damage or expense covered by any property insurance policy or policies maintained by the Port.

8.5 Survival of Indemnities

The indemnity agreements set forth in Section 8 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

9. DAMAGE OR DESTRUCTION

9.1 General

Lessee shall immediately notify the Port of damage or destruction to the Premises in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00) ("Casualty"). The Port reserves the right to make proof of loss to the insurance carrier in the event Lessee fails to do so within fifteen (15) days of any Casualty.

9.2 Reconstruction

In the event of a Casualty of less than \$100,000, the Port shall, as soon as practicable, repair or reconstruct the damaged improvements. The Port's obligations with respect to the repair or reconstruction shall be limited to the repair or reconstruction of the Premises to substantially the same condition as when delivered to Lessee or as existed just prior to the Casualty. No damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises. The Port shall do any such repair or restoration work with reasonable diligence. In no event shall the Port be obligated to insure or protect against loss by fire or other casualty to the contents of the Premises and shall not be obligated to repair any damage to or replace any improvements paid for by Lessee or any of Lessee's equipment, inventory or personal property.

9.3 Termination

In the event of a Casualty of \$100,000 or more, Lessee and the Port shall first confer within the first thirty (30) days after such Casualty as to whether Lessee may continue to use the Premises for conducting the Permitted Uses. If after conferring the parties are unable to agree as to Lessee's continued occupancy of the Premises, Lessee, after such thirty (30) day period, may elect to terminate this Lease upon written notice to the Port.

9.4 Rent Reduction

During any restoration, Rent shall continue to be paid unless the area of the Premises is reduced by greater than one-third. In that case, Basic Rent shall be abated pro rata from the date of the Casualty through completion of the repair of damages to the Premises, but only to the extent the Premises are unusable for the Permitted Uses. However, if the Premises are damaged, destroyed or rendered untenable as a result of the negligent act or omission of Lessee, Rent shall not abate and the Port may, in its discretion, require Lessee to repair and reconstruct such Premises and pay the costs of repair in excess of insurance proceeds recovered therefore; or, if Lessee fails or refuses to complete such reconstruction, the Port may itself choose to repair and reconstruct such Premises, and Lessee shall be responsible for reimbursing the Port for the costs and expenses incurred in such repair in excess of insurance proceeds recovered therefor.

10. TERMINATION

10.1 Duties on Termination

Upon termination of the Lease for any reason, Lessee shall deliver all keys to the Port and surrender the Premises to the Port in the condition in which the Premises were received, subject to reasonable wear and tear, or to other condition acceptable to the Port.

10.2 Permanent Alterations

Lessee shall remove the portion of the rail track which has been disrupted by the installation of the tunnel shaft.

10.3 Lessee's Personal Property

10.3.1 Removal Requirement

Personal property shall remain the property of Lessee if placed on the Premises by Lessee. At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove from the Premises any and all of Lessee's removable Personal Property and shall repair any damage to the Premises resulting from the installation or removal of such Personal Property. Title to any items of Lessee's Personal Property which remain on the Premises after the termination date of this Lease may, after reasonable notice to Lessee, be taken by the Port, and the Port shall have the option, in its sole discretion, of: (i) retaining any or all of such Personal Property without any requirement to account to Lessee therefor; or (ii) removing and disposing of any or all of such Personal Property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then-current interest rate, from Lessee upon demand.

10.3.2 Holding Over

If Lessee holds over after this Lease terminates, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by this Lease,

except that the tenancy shall be from month-to-month, subject to the payment of all Rent in advance, with the monthly Basic Rent being equal to one hundred and fifty percent (150%) of Basic Rent per month. Such holdover tenancy may be terminated at any time upon one month's written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to take immediate action to evict Lessee. Nothing contained herein shall be construed as consent by the Port for Lessee to hold over. In the event that Lessee is a holdover tenant or a tenant at sufferance beyond June 30 of any year, Lessee shall be responsible for payment of any assessed property taxes for the entire following tax year without proration.

11. DEFAULT

11.1 Event of Default

The occurrence of any of the following shall constitute an Event of Default (also referred to as a "Default").

11.1.1 Default in Rent

Failure of Lessee to pay any Rent or other amount payable to the Port as provided herein within fifteen (15) days of the date due. Notice by the Port that Rent or such other amount is past due shall be required. The Port shall provide fifteen (15) days notice to Lessee of non-receipt of rent and Lessee shall have fifteen (15) days after receipt of notice to pay any past due rent.

11.1.2 Default in Other Covenants

Failure to substantially comply with a material provision of this Lease may be considered a Default. Lessee shall have thirty (30) days after receipt of written notice by the Port describing the nature of the Default to cure the Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30)-day period, this provision shall be complied with if Lessee begins correction of the Default within the thirty (30)-day period and thereafter proceeds in good faith and with all reasonable diligence to effect the cure as soon as practical and to the reasonable satisfaction of the Port.

11.1.3 Abandonment

Failure of Lessee for sixty (60) or more continuous days to use and occupy the Premises for the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease. In the case of abandonment, reasonable notice that an Event of Default has occurred shall be required from the Port.

11.2 Remedies on Default

Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, the Port may exercise any or all of the following remedies,

in addition to any other rights and remedies provided elsewhere in this Lease or otherwise at law or in equity.

11.2.1 Re-entry

Without accepting surrender, the Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution, or damages therefor and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold, and enjoy the Premises.

11.2.2 Reletting

Following re-entry, the Port may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Lease, at such rentals and upon such conditions (including concessions and free rent periods) as the Port may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Premises, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make such physical changes to the Premises as the Port considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. If the Port has other unleased space, the Port shall have no obligation to attempt to relet the Premises prior to leasing such other unleased space. To the extent allowed under Oregon law, the Port shall have no obligation to mitigate Lessee's damages and shall not be required to attempt to relet the Premises to a potential lessee with whom the Port has been negotiating a lease for other space owned by the Port or to whom the Port has shown other space owned by the Port. If the Port has relet all or any part of the Premises for the period which otherwise would have constituted all or any part of the unexpired portion of the Lease Term, the amount of Rent reserved on such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of the Lease or an acceptance of surrender of the Lease.

11.2.3 Rent Recovery

Whether or not the Port retakes possession or relets the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the Default. Damages shall include, without limitation: (i) all Rents otherwise owed under this Lease (subject only to Oregon laws concerning mitigation of damages); (ii) all legal expenses and other related costs incurred by the Port as a result of Lessee's Default; (iii) that portion of any leasing commission paid by the Port as a result of this Lease which can be

attributed to the unexpired portion of this Lease; (iv) all costs incurred by the Port in restoring the Premises to good order and condition or in remodeling, renovating or otherwise preparing the Premises for reletting; and (v) all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the Default.

11.2.4 Recovery of Damages

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may, in one action, recover accrued damages, plus damages attributable to the remaining Lease Term, including, but not limited to, all Rent due and payment for damages to the Premises. If the Port has relet all or any part of the Premises for all or any part of the period remaining on the Lease Term, this amount will be credited to Lessee, less all expenses incurred in reletting.

11.3 Termination of Lease

The Port may terminate this Lease upon the occurrence of an uncured Event of Default by giving Lessee written notice that this Lease is terminated. However, even if Lessee breaches this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for Default and may be included in a notice of failure of compliance. No such termination shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

11.4 Remedies Cumulative and Nonexclusive

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

11.5 Port Curing of Lessee's Defaults

If Lessee shall Default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such Default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency and in any other cases after giving a notice of Default if and as required by

Section 11.1. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as additional Rent, for any undisputed amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. Any sums to be so reimbursed shall bear interest from the date of expenditure at the Delinquency Rate until paid.

11.6 Default by Port

In the event of any default by the Port, Lessee's exclusive remedy shall be an action for damages but not for consequential or punitive damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have thirty (30) days within which to cure any such default, or if such default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof.

12. ASSIGNMENT, SUBLEASE, MORTGAGE, AND TRANSFER

12.1 General Prohibition

This Lease is personal to Lessee. Therefore, except as provided in Section 12.2, no part of the Premises and no interest in this Lease may be assigned, pledged, transferred, mortgaged, or subleased by Lessee nor may a right-of-use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means. Except as expressly allowed by Section 12.2, any attempted assignment or sublease by Lessee shall be void and shall be an immediate Lessee Default.

12.2 Right to Sublet to Lessee's Contractor

Lessee shall have the right to assign or sublet all or a portion of the Premises to Lessee's general contractor performing the Permitted Uses so long as: (a) after such assignment, Lessee (i.e., the City of Portland) shall not be released from, and shall remain directly liable under, this Lease; (b) Lessee shall provide the Port with at least thirty (30) days prior written notice of Lessee's intent to assign its interest under this Lease, together with the documentation necessary to show that the proposed assignee is Lessee's general contractor for the Permitted Uses; and (c) within thirty (30) days after the transfer has occurred, Lessee shall deliver to the Port a copy of the written assignment and assumption executed by Lessee and the Lessee's contractor documenting the assignment by Lessee and the assumption by the contractor of all of Lessee's obligations arising under this Lease after the date of transfer.

12.3 Transfer by the Port

At any time after the Commencement Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, Lessee shall recognize the transferee as the new Lessor under the Lease.

Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer, so long as the transferee has agreed with the Port to assume all obligations of the Port under this Lease.

12.4 Estoppel Certificates

Lessee agrees to execute and deliver to the Port, at any time and within thirty (30) days after written request, a statement certifying, among other things: (i) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications, including any amendments to the Lease); (ii) the dates to which Rent has been paid; (iii) whether or not the Port is in violation in performance of any of its obligations under this Lease and, if so, specifying the nature of each such violation; and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a violation by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this Section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation.

13. GENERAL PROVISIONS

13.1 Covenants, Conditions, and Restrictions

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now imposed upon the Premises and to any applicable land use or zoning laws or regulations.

13.2 Governing Law

This Lease shall be governed and construed according to the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

13.3 Mediation

If any dispute should arise between the Port and Lessee concerning this Lease or the parties' obligations or activities hereunder, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties, prior to commencement of arbitration or litigation. If the parties fail to agree on a mediator, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

13.4 Port and Lessee

References to the Port and to Lessee herein are intended to include the commissioners, directors, officers, employees, and agents of both when acting in the course and scope of their employment or as an agent thereof.

13.5 No Benefit to Third Parties

The Port and Lessee are the only parties to this Lease and, as such, are the only parties entitled to enforce its terms. Unless specifically provided otherwise in this Lease, nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

13.6 Notices

All notices required under this Lease shall be in writing and shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

If by mail or by hand delivery to Lessee:

Westside CSO Project Manager
Bureau of Environmental Services
1120 SW Fifth Ave., Room 1000
Portland, OR 97204

Property Manager
Bureau of Environmental Services
1120 SW Fifth Ave., Room 1000
Portland, OR 97204

If by mail to the Port:

The Port of Portland
P.O. Box 3529
Portland, OR 97208
Attention: Manager, Property & Development Services

With a copy to:

The Port of Portland
P.O. Box 3529
Portland, OR 97208
Attention: Legal Department

If by hand delivery to the Port:

29-Terminal 1 North Lease

\\popfs\propdev-pvt\legal\leases\archive\cso terminal
1 lease - final2.doc

POPT1N100531

The Port of Portland
121 NW Everett
Portland, OR 97209
Attention: Manager, Property & Development Services

With a copy to:

The Port of Portland
121 NW Everett
Portland, OR 97209
Attention: Legal Department

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision. In order for notice to be deemed effectively given to the Port, notice must be sent to both Port addresses listed above.

13.7 Time is of the Essence

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

13.8 Nonwaiver

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision of this Lease.

13.9 Survival

Any covenant or condition (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by its terms is to survive the termination of this Lease shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

13.10 Partial Invalidity

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

13.11 No Light or Air Easement

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

13.12 Lease Subject to Bonds and Ordinances

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises herein.

13.13 Calculation of Time

Unless referred to as Business Days, all periods of time referred to in this Lease shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government. "Business Days" shall mean Monday through Friday and shall exclude Saturday, Sunday, and Legal Holidays.

13.14 Headings

The article and section headings, table of contents and table of definitions contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

13.15 Exhibits Incorporated by Reference

All exhibits attached to this Lease are incorporated by reference herein for all purposes.

13.16 Modification

This Lease may not be modified except by a writing signed by the parties hereto.

13.17 No Brokers

Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the other in connection with this Lease.

13.18 Attorney Fees

If a suit, action, or other proceeding of any nature whatsoever (including any administrative proceeding or any proceeding under the U.S. Bankruptcy Code including, but not limited to, any proceeding involving assumption or rejection of this Lease) is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and

expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or petition for review, in addition to all other amounts provided by law.

13.19 Entire Agreement

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises and shall supersede all previous communications, representations, or agreements, whether oral or written, between the parties hereto with respect to such leasing. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in this Lease. No claim for liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, any claimed breach of any representations or promises not expressly set forth in this Lease.

13.20 Provisions Applicable to Others

All provisions of this Lease governing Lessee's use of the Premises and Lessee's activities and conduct on, about or from the Premises shall apply to Lessee's officers, agents, employees, invitees, and contractors.

13.21 Successors

The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words 'Port' and 'Lessee' and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto. As used in this Lease, the term 'Port' shall encompass all officers, directors, commissioners, employees, and agents of the Port when acting on behalf of the Port.

13.22 Joint and Several Obligations

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

13.23 Execution of Multiple Counterparts

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

13.24 Defined Terms

Capitalized terms shall have the meanings given them in the text of this Lease.

13.25 No Limit on Port's Powers

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

13.26 No Limits on Lessee's Powers

Nothing in this Lease shall limit, in any way, the power and right of the Lessee to exercise its governmental rights and powers, including its powers of eminent domain.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

LESSEE
THE CITY OF PORTLAND

By: Dean C. Mann

Name: DEAN C. mann

Title: Director, BE

APPROVED AS TO FORM

By: Jan V. V. B.
City Attorney

THE PORT OF PORTLAND

By: Bill Wyatt
Bill Wyatt, Executive Director

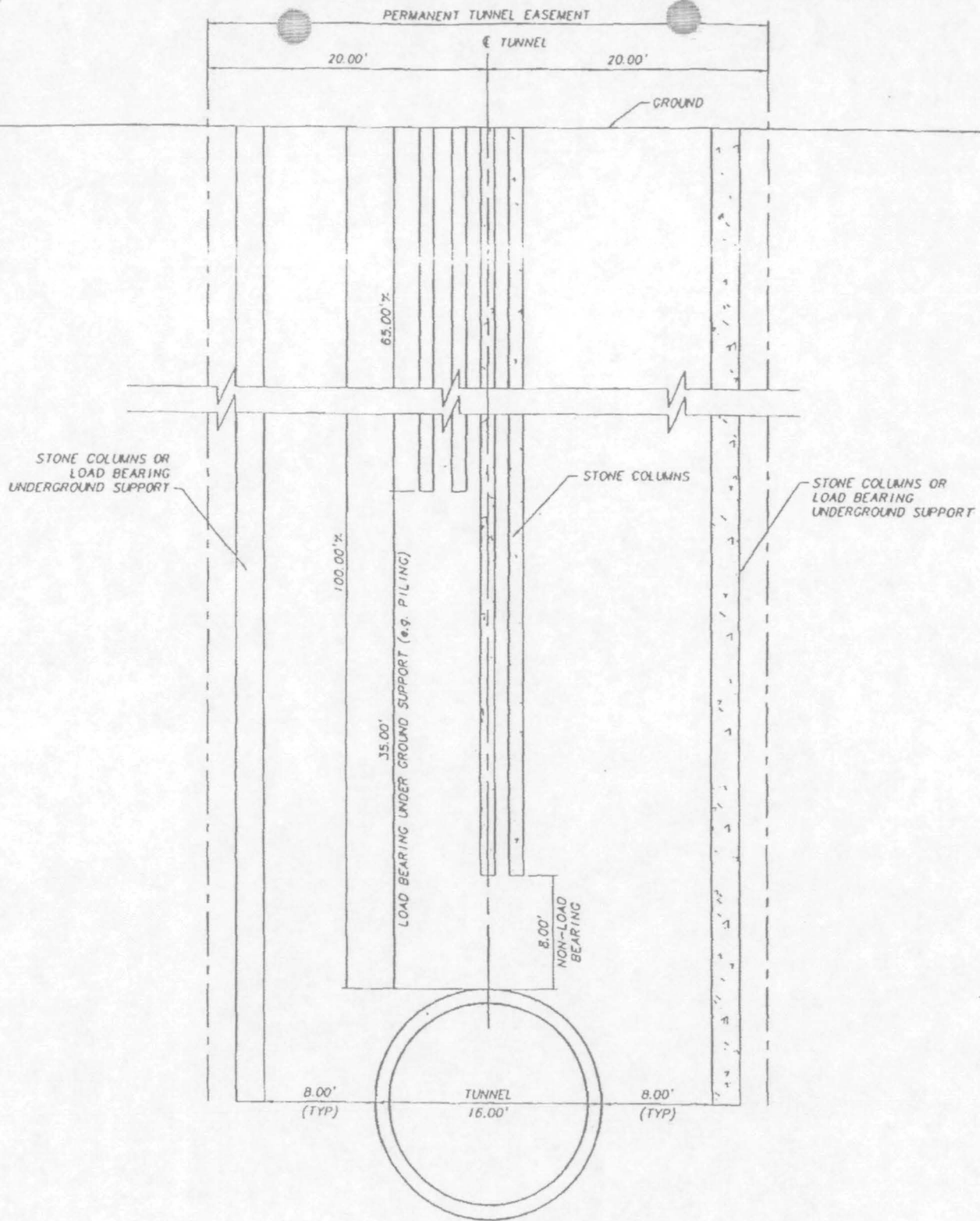
APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND

By: David B. H.
Counsel for the Port of Portland

APPROVED BY COMMISSION ON:

05-08-02





RESTRICTIONS ON SUBSURFACE DEVELOPMENT
TO AVOID PENETRATING TUNNEL

**PB PARSONS
BRINCKERHOFF**
400 S.W. Sixth Ave. Portland, OR 97204

CITY OF PORTLAND
ENVIRONMENTAL SERVICES

10 0 5 10 20
SCALE FEET



**WEST SIDE CSO TUNNEL
TUNNEL EASEMENT**

JOB NO.
6680

FIGURE NO.

EXHIBIT B Exhibit B Page 22 of 22

POPT1N100538

EXHIBIT C

ABOVEGROUND AND MOBILE STORAGE TANKS FOR HAZARDOUS SUBSTANCES USE PROVISIONS

1. DEFINITIONS

The following definitions shall supplement those in the foregoing Lease:

1.1 Tank; Tank Facility

"**Tank**" means collectively any aboveground and/or mobile storage tanks used to store Hazardous Substances. "**Tank Facility**" means, collectively, the aboveground storage tanks and mobile storage tanks, associated equipment and structures described in attached **Exhibit C-1**.

1.2 Spill Prevention, Control and Countermeasures Plan

"Spill Prevention, Control and Countermeasures Plan" ("**SPCC Plan**") means a written plan required by Environmental Law, or if not required by Environmental Law, an equivalent plan required by the Port for the Tank Facility as a condition of this Exhibit, prepared by the Lessee to address spill prevention, spill control, corrective action and related management, training and monitoring activities in the event of a Hazardous Substance Release.

2. GENERAL ENVIRONMENTAL OBLIGATIONS

2.1 General

In the event of any conflict between this Exhibit and the foregoing Lease, the more restrictive provision shall apply.

2.2 Consent to Installation and Operation

The Port consents to the installation and operation of the Tank and the Tank Facility described in **Exhibit C-1**, at the locations set forth in attached **Exhibit C-1**, by Lessee at the Premises. Only the Tank(s) located and described in **Exhibit C-1** may be operated. At least sixty (60) days prior to Lessee's proposed installation of an upgrade, retrofit, or replacement of any part of the Tank Facility or related equipment, Lessee will submit information on the proposed model, capacity, equipment and location of the upgrade, retrofit, or replacement, to the Port for its approval, which shall not be unreasonably withheld. As part of any approval process, Lessee must obtain the Port's consent to modify **Exhibit C-1** to include pertinent information on the upgrade, retrofit, or replacement. Notwithstanding the above, no underground storage tanks are permitted on the Premises.

2.3 Consent to Storage of Hazardous Substances

The Port consents to the storage of the following Hazardous Substances in the Tank Facility: **oil, gasoline and/or diesel for fueling machinery and equipment**. Under no circumstances shall Lessee manage any other Hazardous Substances in the Tank Facility without

1- Aboveground and Mobile Storage Tanks for Hazardous Substances – Use Provisions
\\popfs\propdev-pvt\legal\leases\drafts\cso t1 lease - tank facility exhibit2.doc

the Port's prior written consent after appropriate disclosure of the nature of the Hazardous Substance concerned.

2.4 Design Requirements

The design of the Tank Facility or of any upgrade, retrofit, or replacement of any part of the Tank Facility or addition thereto shall meet the requirements of applicable laws and regulations, including but not limited to Environmental Law, occupational safety and health law, fire codes, and best management practices appropriate for the storage, transfer and dispensing of Hazardous Substances, and shall include, as appropriate, double-wall steel tanks and piping or have secondary containment including a concrete base designed to support the tanks and to contain any spillage that may occur during transfer of Hazardous Substances. If the Tank Facility described in **Exhibit C-1** and authorized by this Exhibit does not meet those requirements, Lessee shall obtain Port approval to install any substitute Tank Facility that meets those requirements and to amend **Exhibit C-1** to describe the actual Tank Facility components installed.

2.5 Port not Responsible for the Tank Facility

It is understood and agreed that by consenting to the installation and operation of the Tank Facility, the Port is not responsible for the proper installation, operation, maintenance, monitoring, storage activities, corrective action, remediation, removal, closure or decommissioning of the Tank Facility. Lessee is jointly and severally liable and exclusively responsible for any and all investigation, corrective action, monitoring or other site closure or decommissioning requirements resulting from any Hazardous Substance Release or arising from the installation, operation, maintenance, storage activities or removal of any component of the Tank Facility. Lessee, and not the Port, is responsible for any regulatory requirements relating to any installation, operation, maintenance, monitoring, storage activities or removal of any component of the Tank Facility.

2.6 Permits and Consents

Lessee is responsible for obtaining all necessary permits or consents required by applicable Environmental Laws prior to the installation and operation of the Tank Facility. Lessee shall provide copies of all such permits and consents to the Port at least ten (10) calendar days prior to the date on which installation or operation of any Tank Facility is intended to commence.

2.7 Compliance with Laws

Lessee is responsible for complying with all applicable Environmental Law and best management practices governing the installation and operation of the Tank Facility in a manner and at the times required by those laws and practices, and with any upgrade, retrofitting or replacement requirements that become applicable to the Tank Facility prior to their closure and decommissioning.

2.8 Spill Prevention Control and Countermeasures Plan

2.8.1 Preparation of Plan

Lessee shall prepare a SPCC Plan to address the measures to be followed by Lessee to prevent, control, and perform corrective actions after a Hazardous Substance Release, prior to installation of Tanks. A complete copy of the SPCC Plan shall be maintained at the Premises, and a copy shall be provided to the Port. The SPCC Plan shall meet all requirements of applicable Environmental Law, including certification by a registered professional engineer.

2.8.2 General Requirements

In addition to the SPCC Plan elements required by Environmental Law for Lessee's Tank Facility, or if an SPCC Plan is not required by Environmental Law for Lessee's Tank Facility, an SPCC Plan shall be prepared for the Port to address the measures Lessee will take to prevent the entry of Hazardous Substances onto Port property, into the air, waterways, groundwater, sanitary sewer, or stormwater drainage systems on or adjacent to the Premises, and to clean up after any Hazardous Substance Release on the Premises. The SPCC Plan shall be revised and updated to reflect current operations at a minimum of every three (3) years. The Port shall be provided a copy of all such revisions and updates.

2.8.3 Additional Requirements

Consistent with the requirements of all Environmental Law, Lessee shall include in any SPCC Plan: (i) procedures for the proper receipt, storage and dispensing of Hazardous Substances, including the maintenance, safety checks, and safe practices applicable to the Tank Facility; (ii) procedures for regular inspection of each aboveground storage tank system within the Tank Facility, including, but not limited to, confirmation that each such system and key components, such as pumps, hoses, and fittings, are in good and safe working condition; (iii) procedures for immediately - no later than within one (1) hour of acquiring relevant information or knowledge - notifying the Port of any suspected or confirmed release of Hazardous Substances from the Premises or Tank Facility, and for immediate verbal and written notification to the appropriate regulatory agencies within time frames specified by Environmental Law; (iv) operating procedures for spill contingency and emergency response to Hazardous Substance Releases, including the designation of individuals responsible for directing the response and corrective actions for such releases; (v) procedures to address large Hazardous Substance Releases that on-site resources may be inadequate to manage, including, but not be limited to, identification of an outside 24-hour emergency response contractor to handle large Hazardous Substance Releases; (vi) provision for on-site (and, with respect to mobile storage tanks, portable) spill response equipment ready for immediate use, including sufficient equipment to keep a Hazardous Substance Release from reaching the stormwater system, sanitary system or the Willamette River; (vii) provision for trained onsite personnel to operate the spill response equipment during filling and dispensing operations and available on call at all other times; (viii) provision for prompt regular provision to the Port of all copies of all permits, consents, approvals, reports, and other correspondence with any regulatory agencies pertaining to the Tank Facility and compliance with Environmental Laws; (ix) provision for training of personnel on compliance with applicable Environmental Law and SPCC Plan implementation.

3- Aboveground and Mobile Storage Tanks for Hazardous Substances – Use Provisions
\\popfs\propdev-pvt\legal\leases\drafts\cso t1 lease - tank facility exhibit2.doc

3. PORT'S ADDITIONAL RIGHTS

In addition to the rights stated in the Lease, the Port shall have the following additional rights.

3.1 Right of Inspection

The Port reserves the right, at any time and from time to time, to inspect the Premises and the Tank Facility, including any monitoring wells, for the purpose of determining compliance with the provisions of this Exhibit. The Port shall not be obligated to perform inspections nor to share the findings of any inspection with the Lessee.

3.2 Port's Right to Stop Installation or Operation

The Port shall have the right to direct Lessee to immediately cease installation or operation of any component of the Tank Facility if the Port determines that the installation or operation is not being undertaken in accordance with applicable Environmental Law or other laws and regulations, and the terms of this Exhibit.

3.3 Early Termination

Subject to the Port's right to direct Lessee to immediately cease installation or operation of the Tank Facility as provided in Section 3.2, the Port shall have the right to terminate this Exhibit upon the giving of thirty (30) calendar days notice (the "30 Day Notice") to Lessee if the Port determines that Lessee has failed to cure any violation of this Exhibit or has created an imminent threat of a Hazardous Substance Release. At least seven (7) days prior to giving the 30 Day Notice, the Port shall notify Lessee of the violations or imminent threat and Lessee shall have seven (7) days in which to demonstrate to the Port's satisfaction and thereby avoid a 30 Day Notice that reasonable steps to cure the identified violations or imminent threat are being undertaken. Any unperformed obligations of Lessee hereunder shall survive such termination.

3.4 Port's Right to Perform on Behalf of Lessee

Without limiting its other remedies, the Port shall have the right, upon giving Lessee seven (7) calendar days written notice, or such shorter oral or written notice as circumstances permit in the event of an agency order requiring immediate action or an emergency, to perform Lessee's obligations arising under this Exhibit and charge Lessee the resulting costs, including all Environmental Costs. The Port may not commence performance on behalf of Lessee under this Section 3.4 if, within the seven (7) day or shorter notice period, Lessee promptly begins, and diligently pursues to subsequent completion, the performance of its obligations pursuant to this Exhibit. If Port funds are expended, they shall bear interest at the rate of nine (9%) per annum, or the highest rate allowed by law, whichever is less, from the date that the funds are expended until repaid in full by Lessee.

4. CLOSURE AND DECOMMISSIONING OF THE TANK FACILITY

Closure of the Tank Facility in place is prohibited. Lessee shall give the Port seven (7) days advance notice of any proposed date of any Tank removal and allow the Port to observe such removal. No less than thirty (30) days prior to the end of the Lease or the earlier termination of this Exhibit, Lessee shall provide written confirmation that all of the Tank Facility has been

4- Aboveground and Mobile Storage Tanks for Hazardous Substances – Use Provisions
\\popfs\propdev-pvt\legal\leases\drafts\cso t1 lease - tank facility exhibit2.doc

removed, closed, decommissioned, and disposed of in accordance with Environmental Law and with appropriate regulatory approval.

5. OWNERSHIP OF TANK FACILITY; NO ASSIGNMENT

It is understood and agreed that at all times from installation and during the operation of the Tank Facility and continuing through their proper removal and disposal, Lessee is the sole owner and operator of the Tank Facility. Lessee may not sell, assign or contract away either its owner or operator status or obligations under this Exhibit or the applicable law and regulations without both the express written consent of the Port and the express written amendment of this Exhibit.

EXHIBIT C-1 (PLACEHOLDER)

(TO BE SUBMITTED BY LESSEE, ATTACHED TO AND INCORPORATED INTO THE LEASE, BEFORE ANY TANK FACILITY MAY BE INSTALLED ON THE PREMISES)

DESCRIPTION AND LOCATION OF TANKS

MODEL NO.: _____

MAXIMUM CAPACITY OF TANK: _____

TYPE OF CONSTRUCTION MATERIAL: _____

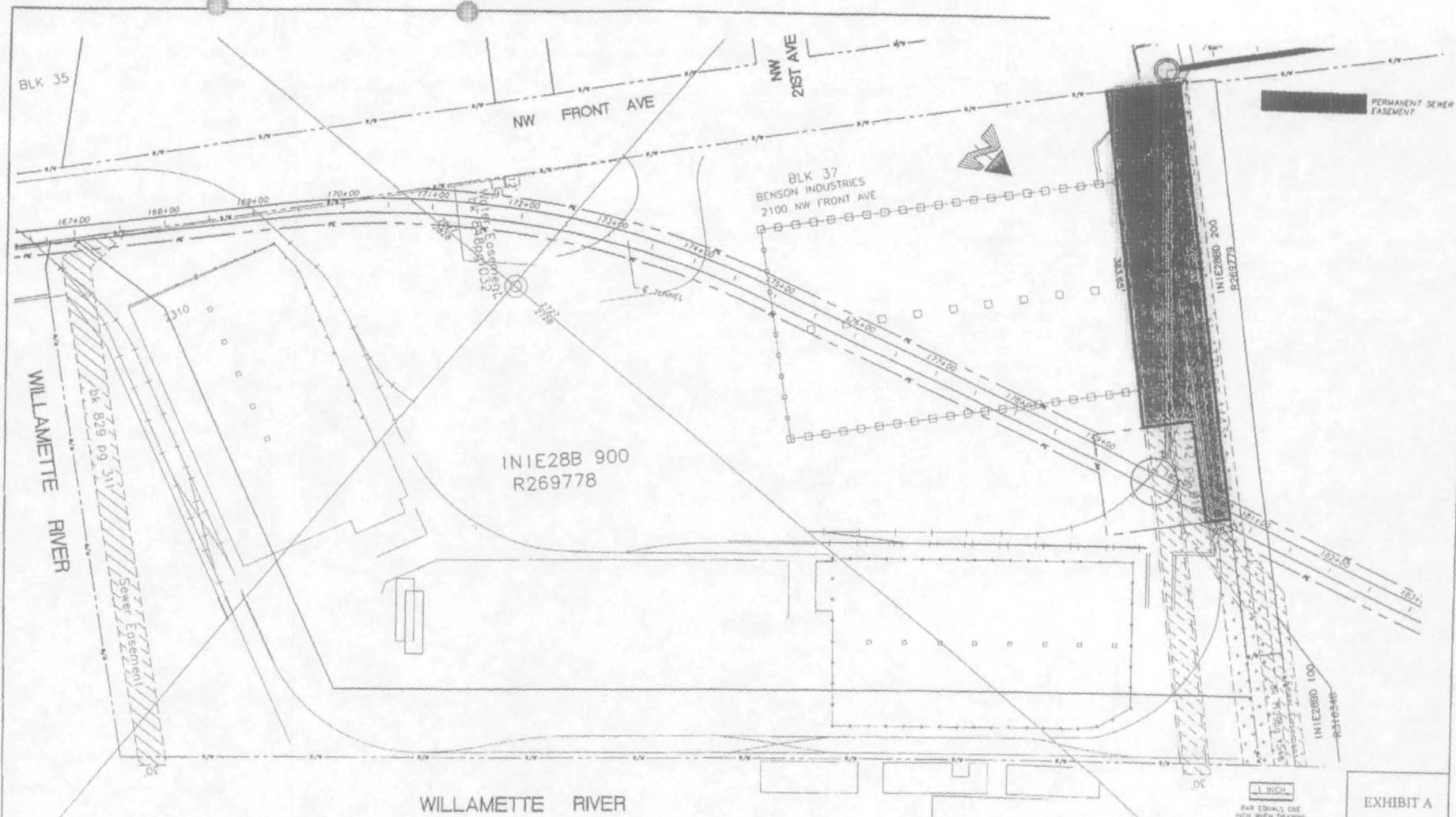
SECONDARY CONTAINMENT: _____

CONTENTS TYPE: _____

LOCATION OF TANK(S): (Attach map showing location of Tank(s).)

Exhibit C-1

\\popfs\propdev-pvt\legal\leases\drafts\cso t1 lease - tank
facility exhibit2.doc



PERMANENT SEWER EASEMENT

INIE28B 900
R269778

BLK 37
BENSON INDUSTRIES
2100 NW FRONT AVE

BLK 35

WILLAMETTE RIVER

WILLAMETTE RIVER

PLAN
SCALE 1"=50'

1"=50'
FOR EQUALS ONE
INCH WHEN DRAWING
IS PLOTTED FULL SIZE
IF NOT SCALE ACCORDINGLY

EXHIBIT A
Page 2 of 2

| | | | |
|---|-------------|-------------|------|
| DESIGNED BY | DATE | APPROVED BY | DATE |
| DRAWN BY | PROJECT NO. | CHECKED BY | DATE |
| PROJECT COMPLETED | CHECKED BY | DATE | |
| MAP CORRECTOR BY | CHECKED BY | DATE | |
| FINAL MAP DATA | CHECKED BY | DATE | |
| SUBMITTAL FOR PERMIT - SDC/PPC/Reg. 06/17/01 at 14:03 | REGION WORK | CLOSE WORK | |

CITY OF PORTLAND
ENVIRONMENTAL SERVICES
WILLAMETTE RIVER CSO CONTROL PROJECT



PB PARSONS BRINCKERHOFF
100 S.W. Sixth Ave. Portland, OR 97204

WEST SIDE CSO PROJECT
SEWER EASEMENT
PROPERTY NUMBER 5
PORT OF PORTLAND - TERMINAL ONE
Exhibit B Page 2 of 22

POPT1N100545